

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RATTHAPON YAPUNA,
SOMKHIT NASEE, WISIT
KAMPILO, and all other similarly
situated persons,

Plaintiffs,

v.

GLOBAL HORIZONS
MANPOWER INC., MORDECHAI
ORIAN, PLATTE RIVER
INSURANCE COMPANY,
ACCREDITED SURETY AND
CASUALTY COMPANY, INC.,
VALLEY FRUIT ORCHARDS,
LLC, and GREEN ACRE FARMS,
INC.,

Defendants.

NO. CV-06-3048-RHW

**ORDER DENYING
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Before the Court is Plaintiff's Motion for Partial Summary Judgment re:
Joint and Several Liability of Valley Fruit Orchards and Green Acres Farms (Ct.
Rec. 105). The motion was heard without oral argument.

In their complaint, Plaintiffs allege that the Global Defendants¹ violated the
Washington Farm Labor Contractor Act by making false and misleading

¹Defendants Global Horizons Manpower, Inc., Mordechai Orian, Platte
River Insurance Company and Accredited Surety and Casualty Company, Inc, are
collectively referred to as the Global Defendants.

1 representations to Plaintiff concerning the terms and conditions of employment;
2 failing to provide written statements at the time of recruiting, soliciting, or hiring
3 Plaintiffs; failing to comply with the terms and provisions of their agreements and
4 contracts; and acting as a farm labor contractor without a license to do so from the
5 State of Washington. Plaintiffs seeks to hold the Grower Defendants² jointly and
6 severally liable for the Global Defendants' allegedly unlawful conduct.

7 Plaintiffs now move for partial summary judgment on the Grower
8 Defendants' liability.

9 DISCUSSION

10 A. Standard of Review

11 Summary judgment is appropriate if the "pleadings, depositions, answers to
12 interrogatories, and admissions on file, together with the affidavits, if any, show
13 that there is no genuine issue as to any material fact and that the moving party is
14 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). There is no
15 genuine issue for trial unless there is sufficient evidence favoring the non-moving
16 party for a jury to return a verdict in that party's favor. *Anderson v. Liberty Lobby,*
17 *Inc.*, 477 U.S. 242, 250 (1986). The party moving for summary judgment bears the
18 initial burden of identifying those portions of the pleadings, discovery, and
19 affidavits that demonstrate the absence of a genuine issue of fact for trial. *Celotex*
20 *Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial
21 burden, the non-moving party must go beyond the pleadings and "set forth specific
22 facts showing that there is a genuine issue for trial." *Id.* at 325; *Anderson*, 477
23 U.S. at 248.

24 In addition to showing that there are no questions of material fact, the
25 moving party must also show that it is entitled to judgment as a matter of law.

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27 ²Defendants Valley Fruit Orchards, LLC and Green Acre Farms, Inc. are
28 collectively referred to as the Grower Defendants.

1 *Smith v. Univ. of Washington Law School*, 233 F.3d 1188, 1193 (9th Cir. 2000).

2 The moving party is entitled to judgment as a matter of law when the non-moving
3 party fails to make a sufficient showing on an essential element of a claim on
4 which the non-moving party has the burden of proof. *Celotex*, 477 U.S. at 323.

5 When considering a motion for summary judgment, a court may neither
6 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant
7 is to be believed, and all justifiable inferences are to be drawn in his favor.”

8 *Anderson*, 477 U.S. at 255. When the evidence yields conflicting inferences,
9 summary judgment is improper, and the action must proceed to trial. *Munger v.*
10 *City of Glasgow Police Dep't*, 227 F.3d 1082, 1087(9th Cir. 2000).

11 **B. Plaintiffs’ Arguments**

12 Plaintiffs make two arguments in support of their motion: (1) the Grower
13 Defendants’ failed to engage in due diligence to determine whether Global had a
14 license to operate as a farm contractor in the State of Washington, thereby
15 subjecting themselves to joint and several liability; and (2) the doctrine of
16 collateral estoppel, or issue preclusion, provides for joint and several liability on
17 the part of the Grower Defendants.

18 Each of these arguments will be addressed in turn.

19 **1. Washington Farm Labor Contractors Act**

20 Wash. Rev. Code § 19.30.200 states:

21 Any person who knowingly uses the services of an unlicensed
22 farm labor contractor shall be personally, jointly, and severally liable
23 with the person acting as a farm labor contractor to the same extent
24 and in the same manner as provided in this chapter. In making
25 determinations under this section, any user may rely upon either the
26 license issued by the director to the farm labor contractor under RCW
27 19.30.030 or the director's representation that such contractor is
28 licensed as required by this chapter.

Wash. Admin. Code 296-310-260 states:

(1) A person who knowingly uses the services of an unlicensed
contractor is liable for unpaid wages, damages, and civil and criminal
penalties to the same extent as the unlicensed contractor.

(2) Pursuant to RCW 19.30.200, a person may prove lack of

1 knowledge by proving that she or he relied on a license issued by the
2 department under chapter 19.30 RCW, or upon the department's
3 representation that the contractor was licensed. The department shall
4 not make oral representations that a contractor is or is not licensed. All
5 representations by the department that a contractor is licensed shall be
6 made in writing and shall be signed by the director or the employment
7 standards supervisor or the assistant director. The department shall not
8 accept reliance on a supposed oral representation as proof in any
9 administrative enforcement proceeding.

10 Plaintiff reads these two provisions as creating an affirmative duty on the
11 part of the user of a farm labor contractor to engage in due diligence by insisting on
12 seeing either the license issued by the director to the farm labor contractor, or
13 written representations by the director that the contractor is licensed under
14 Washington law. According to Plaintiffs, the failure to do so subjects the user to
15 joint and several liability.

16 The Court disagrees. Instead, the Court reads the statute and regulation
17 together as setting forth an affirmative defense and directing the Department to not
18 provide oral representations to inquiries regarding licensed farm labor contractors.
19 Moreover, the Court finds that whether and when the Grower Defendants had
20 constructive knowledge that Global lacked the required Washington FLCA license
21 is a question of fact.

22 **2. Collateral Estoppel**

23 Plaintiffs argue that the Grower Defendants are collaterally estopped from
24 relitigating the issue of whether they are jointly and severally liable based on the
25 Court's ruling in a collateral proceeding, *Perez-Farias, et. al. v. Global Horizons,*
26 *et al.*, CV-05-3061-RHW. In that case, Judge McDonald made the following
27 rulings:

28 It is undisputed that Global operated as an unlicensed farm
labor contractor in Washington State on behalf of Green Acre and
Valley Fruit from January to October 6, 2004. The uncontested facts
reveal that neither Mr. Morford nor Mr. Verbrugge investigated
whether Global possessed a valid Washington State farm labor
contractor license, and, after they were each advised that no license
existed in July of 2004, they continued to use Global's services.
Green Acre and Valley Fruit continued to use the services of Global
between July and October of 2004.

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2 There, the Grower Defendants failed to file a response to the plaintiff's
3 motion for summary judgment.³ Moreover, Judge McDonald did not address
4 whether there is an affirmative duty on the part of the user of a farm labor
5 contractor to verify that the contractor has a license, nor did he address whether a
6 user is liable for all conduct of the contractor, or only for actions that were taken
7 while the contractor was not licensed, or during the period that the user knew that
8 the contractor was unlicensed. Collateral estoppel does not prevent Defendants
9 from contesting their joint and several liability.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion for Partial Summary Judgment re: Joint and Several
12 Liability of Valley Fruit Orchards and Green Acres Farms (Ct. Rec. 105) is
13 **DENIED.**

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order and forward copies to counsel.

16 **DATED** this 10th day of September, 2008.

17 *S/ Robert H. Whaley*

18 **ROBERT H. WHALEY**
19 Chief United States District Judge

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27 ³This Court later found that good cause existed and vacated the award of
28 statutory damages.